

United States Senate

WASHINGTON, DC 20510

April 25, 2013

Honorable Jack Reed
Chairman
Subcommittee on Interior, Environment
and Related Agencies
Senate Appropriations Committee
Senate Dirksen Building, 131
Washington, DC 20510

Honorable Lisa Murkowski
Ranking Member
Subcommittee on Interior, Environment
and Related Agencies
Senate Appropriations Committee
Senate Hart Building, 125
Washington, DC 20510

Dear Chairman Reed and Ranking Member Murkowski:

As the subcommittee begins its consideration of a Fiscal Year 2014 appropriation bill for the agencies within the jurisdiction of the Subcommittee on Interior, Environment and Related Agencies, I respectfully request support for the programs listed below. The funding requested for the national programs is to be spent at the agencies' discretion within the existing budget line and is not intended for any specific business, state, community or other entity.

1. **Title:** Indian Health Services Contract Support Costs

Program Description: The Indian Health Service (IHS) Contract Support Costs (CSC) account supports federal government payments to tribes for certain administrative costs associated with executing tribal self-governance contracts and compacts under the *Indian Self Determination and Education Assistance Act* (ISDEAA), P.L. 93-638, that are not otherwise funded under the contract or compact. The Bureau of Indian Affairs is also required to pay CSC under ISDEAA. Payments are available for direct and indirect contract support costs. Indirect contract support costs are those incurred for a tribe's or tribal organization's common services, including, but not limited to, insurance and audits. Direct contract costs include program-specific costs such as unemployment taxes and workers compensation insurance. The account also supports the costs associated with executing or administering new and/or expanded self-determination contracts.

Fiscal Year 2014 President's Budget Request: \$477 million

Additional Amount Requested: +\$140 million

Report Language Requested: In the Fiscal Year 2014 budget request the Indian Health Service is proposing the creation of a new appropriations account for contracting support costs and to limit contract payments from that account to individual tribal contractors in a predetermined amount specified in an accompanying funding table. IHS is proposing this change based on an interpretation of last year's Supreme Court ruling in *Salazar v Ramah*.

The Committee rejects the proposal. The Supreme Court ruling in the *Salazar v Ramah* case identifies five actions the Congress *might* choose to implement, but left the choice to Congress, without any formal “recommendation.” Second, the Court reiterated that tribal self-determination contracts are as fully binding as any other government contract. The Committee does not routinely cap payments to other government contractors. Additionally, the agency has not offered any rationale for codifying caps on contract underpayments to contractors that are Indian tribes. Tribal contractors have clear remedies under existing law for addressing any underpayments, including section 110 of the *Indian Self-Determination Act*.

Should IHS continue to pursue this fundamental change to contract support costs, a formal legislative proposal should be submitted to the Congress for adequate consideration. Additionally, should the agency seek the legislative proposal, it shall first conduct full and open tribal consultation with all impacted Tribes and tribal organizations.

The Committee is also disappointed that for a second year the agency’s budget does not include a projection of the total contract support cost requirement for the budget year. Prior to the Fiscal Year 2013 budget, the agency routinely informed Congress of these estimates. The Committee directs the agency to include such information in future budget requests. The Committee has also included bill language requiring the annual disclosure of contract support cost data, regardless of any otherwise applicable privilege against disclosure, such as the deliberative process privilege.

Bill Language Requested: Notwithstanding any other provision of law, including any claim of privilege, the Indian Health Service shall, on or before April 1 of each fiscal year, circulate to every tribal and tribal organization engaged in contracting or compacting under Pub. L. 93-638, as amended, data from the preceding year showing (1) for each tribe and tribal organization, nationally, and by Area, the total amounts of funds provided for the direct costs of contracted or compacted programs, and the total amounts of funds provided for the contract support costs associated with such programs; (2) for each tribe and tribal organization, nationally, and by Area, any deficiency (or surplus) in funds needed to provide required contract support costs; (3) the indirect cost rate and type of rate that has been negotiated with the appropriate Secretary for each tribe and tribal organization; (4) the direct cost base and type of base from which the indirect cost rate is determined for each tribe and tribal organization; (5) the indirect cost pool amounts and the types of costs included in the indirect cost pool; and (6) for the current fiscal year, the agency’s calculation of the estimated national contract support cost requirement for all tribes and tribal organizations.

Rationale: Funding requested does not fully cover contract support cost obligations of the federal government payments to tribes. Without adequate funding there is a severe

deterioration in services and infrastructure of tribal health facilities. Since 2005, a series of Supreme Court cases have reaffirmed the federal government's responsibility to provide Contract Support Costs to Tribes in full. The proposal to "cap" contract support cost payments to contractors violates a binding contract and undermines the nation's relationships with tribes and tribal organizations. Such a drastic restructuring of an appropriations account and long-standing policy should be subject to full and open tribal consultation and Congressional scrutiny.

Budget Account: Department of Health and Human Services, Indian Health Service, Contract Support Costs

2. Title: Bureau of Indian Affairs Contract Support Costs

Program Description: The Bureau of Indian Affairs (BIA) Contract Support Costs (CSC) account supports federal government payments to tribes for certain administrative costs associated with executing tribal self-governance contracts and compacts under the *Indian Self Determination and Education Assistance Act* (ISDEAA), P.L. 93-638, that are not otherwise funded under the contract or compact. BIA is also required to pay CSC under ISDEAA. Payments are available for direct and indirect contract support costs. Indirect contract support costs are those incurred for a tribe's or tribal organization's common services, including, but not limited to, insurance and audits. Direct contract costs include program-specific costs such as unemployment taxes and workers compensation insurance. The account also supports the costs associated with executing or administering new and/or expanded self-determination contracts.

Fiscal Year 2014 President's Budget Request: \$230 million

Additional Amount Requested: +\$12 million

Report Language Requested: In the Fiscal Year 2014 budget request the Bureau of Indian Affairs is proposing the creation of a new appropriations account for contracting support costs and to limit contract payments from that account to individual tribal contractors in a predetermined amount specified in an accompanying funding table. BIA is proposing this change based on an interpretation of last year's Supreme Court ruling in *Salazar v Ramah*.

The Committee rejects the proposal. The Supreme Court ruling in the *Salazar v Ramah* case identifies five actions the Congress *might* choose to implement, but left the choice to Congress, without any formal "recommendation." Second, the Court reiterated that tribal self-determination contracts are as fully binding as any other government contract. The Committee does not routinely cap payments to other government contractors. Additionally, the agency has not offered any rationale for codifying caps on contract underpayments to contractors that are Indian tribes. Tribal contractors have clear remedies under existing law for addressing any underpayments, including section 110 of the *Indian Self-Determination Act*.

Should BIA continue to pursue this fundamental change to contract support costs a formal legislative proposal should be submitted to the Congress for adequate consideration. Additionally, should the agency seek the legislative proposal it shall first conduct full and open tribal consultation with all impacted Tribes and tribal organizations.

The Committee is also disappointed that for a second year the agency's budget does not include a projection of the total contract support cost requirement for the budget year. Prior to the Fiscal Year 2013 budget, the agency routinely informed Congress of these estimates. The Committee directs the agency to include such information in future budget requests.

Rationale: Funding requested does not fully cover contract support cost obligations of the federal government payments to tribes. Without adequate funding there is a severe deterioration in services and infrastructure of tribal health facilities. Since 2005, a series of Supreme Court cases have reaffirmed the federal government's responsibility to Contract Support Costs to tribes in full. The proposal to "cap" contract support cost payments to contractors violates a binding contract and undermines the nation's relationships with tribes and tribal organizations. Such a drastic restructuring of an appropriations account and long-standing policy should be subject to full and open tribal consultation and Congressional scrutiny.

Budget Account: Department of Health and Human Services, Bureau of Indian Affairs, Contract Support Costs

3. Title: Staffing and Operating Costs for Healthcare Facilities

Program Description: Section 818(e) of P.L. 94-437 authorizes IHS to make arrangements with an Indian tribe to establish a joint venture project for the acquisition, including construction, of a health care facility. The Indian tribe will expend tribal funds, private sector funds, or other available non-IHS resources, including loan guarantees, for the acquisition, including construction, of a tribally-owned health care facility. In exchange, for a minimum of 20 years, IHS is to lease the health care facility and the land incidental thereto under a no-cost lease, and agree to provide the equipment, supplies, and staffing for the operation and maintenance of such a health facility.

Fiscal Year 2014 President's Budget Request: \$77 million

Additional Amount Requested: +\$10 million

Rationale: IHS entered into Joint Venture Projects which allowed these tribal health consortia to build much needed facilities in their respective regions. IHS and Congress have the responsibility to provide funding for staff and operational costs for these facilities, as was committed. However, the Fiscal Year 2014 request only funds staffing costs for new facilities. Many Joint Venture Projects entered into in previous years' staffing packages remain unfilled. For example, the Yukon-Kuskokwim Health Corporation has not received funds for a staffing package since the facility opened 22

years ago. With an increase in staff, the Bethel Hospital could serve more patients and deliver quality care in a timely manner.

Bill Language Requested: Of the amount appropriated for Staffing and Operating Costs for Indian Health Service Facilities, not less than \$10 million shall be used to fulfill staffing obligations for Joint Venture Partnerships established prior to Fiscal Year 2013. The Indian Health Service shall provide a report to the Committee not later than 60 days after enactment of this act detailing how funds will be used to fulfill staffing obligations for prior years' joint venture partnerships.

Budget Account: Department of Health and Human Services, Indian Health Services, Staffing and Operating Costs for Healthcare Facilities.

4. Title: Alaska Land Conveyance Program

Program Description: The Alaska Conveyance and Lands Program transfers land title from the Federal government to individual Alaska Natives, Alaska Native Corporations, and the State of Alaska pursuant to the *1906 Native Allotment Act*, the *Alaska Native Veterans Allotment Act of 1998*, the *Alaska Native Claims Settlement Act of 1971* (ANCSA) and the *Alaska Statehood Act of 1959* (Statehood Act). Conveyance work has been ongoing since the 1960s.

Fiscal Year 2014 President's Budget Request: \$16.976 million

Additional Amount Requested: +\$13 million

Rationale: The President's Budget request is approximately \$12 million less than the Fiscal Year 2012 amount enacted and proposed to reduce staffing. There is an estimated \$300 million backlog in work to complete conveyance of lands owed to individual Alaskans, Alaska Native Corporations and the State of Alaska. Restoring funding to appropriate levels sustain progress to the program goals and compliance with law.

Budget Account: Department of Interior, Bureau of Land Management (BLM), Realty and Ownership Management, Alaska Conveyance and Lands

Additional Request: Reject Administration proposal to halt revenue sharing payments to the State of Alaska from NPR-A oil and gas development in order to reallocate these resources to a new Alaska Land Conveyance and Remediation Fund. In essence, this Administration proposal penalizes the State of Alaska and local governments financially for requesting the federal government clean up environmental hazards and contamination left from federal activity on federal lands but are a threat to local residents and subsistence resources.

5. Title: Integrated Resource Restoration

Program Description: Restoration Work across the National Forest System

Fiscal Year 2014 President's Budget Request: \$757 million

Additional Amount Requested: +\$35 million

Rationale: Additional funds will support the agency's forest products/timber sales program. The funding will allow the agency to follow through on commitments made to

complete ten year sales which allow for regional development. The Fiscal Year 2014 request is approximately \$30 million less than the Fiscal Year 2013 amount.

Budget Account: Department of Agriculture, Forest Service, National Forest System, Integrated Resource Restoration Program.

6. Bill Language Requested: (Region 10 Timber Cedar Rider)

No timber sale in Alaska's Region 10 shall be advertised if the indicated rate is deficit (defined as the value of the timber is not sufficient to cover all logging and stumpage costs and provide a normal profit and risk allowance under the Forest Service's appraisal process) when appraised using a residual value appraisal. The western red cedar timber from those sales, which is surplus to the needs of the domestic processors in Alaska, shall be made available to domestic processors in the contiguous 48 United States at prevailing domestic prices. All additional western red cedar volume not sold to Alaska or contiguous 48 United States domestic processors may be exported to foreign markets at the election of the timber sale holder. All Alaska yellow cedar may be sold at prevailing export prices at the election of the timber sale holder.

Rationale: This longstanding appropriations language ensures that USFS timber sales in the Alaska Region will be profitable for purchasers. The cedar export provisions make cedar logs available to domestic purchasers when there is interest, otherwise it allows round log export sales as an important component of timber sale profitability.

7. Title: Environmental Assessment and Studies

Program Description: The Secretary approved a new Five Year Program on August 27, 2012. The Program makes available for exploration and development areas with more than 75 percent of undiscovered technically recoverable oil and gas resources estimated to be on the Outer Continental Shelf (OCS), while advancing an innovative, regionally-tailored approach to offshore oil and gas leasing designed to take into account the particular resource potential, environmental and social concerns, and infrastructure condition of each planning area. The Five Year Program schedules 15 potential sales within the Western and Central Gulf of Mexico, the portion of the Eastern Gulf of Mexico not under Congressional moratorium, as well as offshore Alaska in the Chukchi and Beaufort Seas and in the Cook Inlet. The environmental assessment function manages the coordination of environmental issues and stakeholder involvement, conducts environmental analyses of potential effects from specific proposed activities, undertakes supporting environmental consultations, and ensures proposed activities are in compliance with environmental statutes and requirements.

Fiscal Year 2014 President's Budget Request: \$63.8 million

Additional Amount Requested: +\$1 million

Rationale: Since transfer from the Environmental Protection Agency in Fiscal Year 2012, the Bureau of Ocean Energy Management (BOEM) is responsible for air quality permitting in the Outer Continental Shelf. Additional resources will ensure program

knowledge and air shed modeling data transfer does not delay future exploration plan approval.

Budget Account: Department of Interior, Bureau of Ocean Energy Management, Environmental Assessment and Studies Activity

8. Bill Language Requested: (Roadless)

SEC ____ The Roadless Area Conservation Rule Sections 294.10 through 294.18 of Title 26, Code of Federal Regulations, published at 66 Fed Reg. 3244-3273 do not apply with respect to any National Forest System lands in Alaska.

Rationale: The 2007 Tongass Land Management plan made 676,000 acres available for harvest. Subsequent court decisions reinstating the Roadless Rule have removed 327,000 acres from that timber base. In addition to reducing possible timber sales, the rule increases time and costs for mining and hydroelectric projects in the Tongass National Forest. Unemployment in rural census areas of Southeast Alaska is upwards of 20 percent. This language re-establishes the multiple use principle on the national forests in Alaska to further employment in timber, mining and through making cheaper and renewable power available to communities.

9. Bill Language Requested: (Mapping)

SEC ____ Priority shall be given to strategic digital mapping initiative programs that receive matching funds from other federal agencies and or state governments. Priority should also be given to mapping programs with high concentrations of federal land ownership and the lowest quality elevation data.

Rationale: Only 20-25 percent of Alaska's land mass has modern elevation level data. Through partnerships and cost-sharing with the Department of Defense and the State of Alaska, this program collects that data. Lack of accurate elevation data is a safety hazard for general aviation and navigation and delays resource development activity. It is the basis of all modern digital mapping layers. In contrast, 35-40 percent of the Lower 48 states have modern LIDAR imagery and the quality of the older data is higher than Alaska.

10. Title: Collaborative Forest Landscape Restoration

Program Description: These funds will help accelerate the scale and pace of USDA's forest protection activities and will take advantage of new tools to protect water resources and make forests more resilient to climate change

Support Fiscal Year 2014 President's Budget Request: \$40 million

Budget Account: Department of Agriculture, Forest Service, National Forest System

11. Title: National Endowment for the Humanities

Program Description: The National Endowment for the Humanities (NEH) is an independent federal agency created in 1965. It is one of the largest funders of humanities programs in the United States. Because democracy demands wisdom, NEH serves and

Chairman Reed and Ranking Member Murkowski

April 25, 2013

Page 8

strengthens our republic by promoting excellence in the humanities and conveying the lessons of history to all Americans. The NEH accomplishes this mission by awarding grants for top-rated proposals examined by panels of independent, external reviewers
Support Fiscal Year 2014 President's Budget Request: \$154.5 million

Thank you for your consideration of these requests. Please do not hesitate to contact my staff member, Lindsay Kavanaugh, at (202) 224-1924 if additional information is required.

Sincerely,



Mark Begich
United States Senator

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